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ABSTRACT

The Family Educational Rights and Privacy Act was passed in 1974 because some legislation was needed in order to discourage the abuse of individual rights due to the personal prejudices and/or disapproval of others. There are thousands of persons in American society who because of advanced educational training and a keen sense of perceptivity, can virtually control the lives of others who depend on them for guidance and help in decision making. Professional educators occupy a large segment of this perceptive elite. They possess far more influence over the lives of many people than some members of the profession realize. Thus, it is vital that educators be aware, continuously, of their attitudes and behaviors that directly influence the lives of millions who have given them the privilege of leadership. In higher education, counselors, financial aid personnel, admissions officers and student activities directors can literally make or break the academic career of a student, whether this act is done consciously or not. A clear and concise reference that provides details about the Family Educational Rights and Privacy Act is available to helping professionals who need assistance in dealing with these problems. (Author)

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THE IMPLICATIONS OF THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT AND HOW THEY RELATE TO THE NEW ROLES OF COLLEGE AND UNIVERSITY COUNSELORS AND SUPPORT PERSONNEL

OUTLINE

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- C. Potential and actual power of educators

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Joseph A. Mills
March 15, 1978

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THE IMPLICATIONS OF THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT AND HOW THEY RELATE TO THE NEW ROLES OF COLLEGE AND UNIVERSITY COUNSELORS AND SUPPORT PERSONNEL

Can you imagine a world in which everyone is allowed to do his or her "own thing"? I speak not of a world of anarchy but a world in which each individual is allowed total freedom of expression short of violating the rights of others. In such a world, there is no need for military forces or policemen or policewomen, because each person's rights and well being is respected. There would be no need for legislation to protect personal liberties, because who would be so inconsiderate as to violate another's rights. There would be no need even for a Privacy Act, nor would the concept of privacy even exist. Since each individual is free to choose the style and means of living that he or she desires, without disrespect or condescension from anyone else, what need would there be to hide anything? In such a utopia, prejudice and discrimination, fear and insecurity, crime and injustice would be non-existent concepts, attitudes and behaviors. And, thus, we all would finally have made it to heaven, indeed.

For better or worse, such a heaven is not the prevailing situation for the vast majority of us who live

on this planet. Daily we are beseiged by mental and physical forces that directly, and indirectly, influence our lives greatly. Racism, sexism, elitism, prejudice, discrimination, crime, social injustice and societal inequity manifest themselves everyday in hundreds of overt and covert ways. And, none of us totally escapes the web of socialization and value programming that entangles us. For each of us is a product of the sum total of the personal interactions, media communications, relationships with major institutions, age, economic, social and environmental factors that have had an impact on our lives. This great diversity in individual learning and conditioning is but one reason why we, as a society, have found it mandatory to have a system of laws designed to regulate the behaviors of millions of people in order to encourage and maintain order. Furthermore, this is also why a law such as the Family Educational Rights and Privacy Act was passed. Some legislation was needed in order to discourage the abuse of individual rights because of the personal prejudices and/or disapproval of others. There are thousands of persons in American society who can, because of advanced educational training and a keen sense of perceptivity, virtually control the lives of others who depend on them for guidance and help in decision making. Professional educators occupy a large segment of this perceptive elite. They possess far more influence over

the lives of many people than some members of the profession realize. Thus, it is vital that educators be aware, continuously, of their attitudes and behaviors that directly influence the lives of millions who have given them the priviledge of leadership. In higher education, counselors, financial aid personnel, admissions officers and student activities directors can literally make or break the academic career of a student, whether this act is done consciously or not. I suggest that in light of the many subtle implications of the Family Educational Rights and Privacy Act, college and university counselors and support personnel might well consider the following:

1) Have you recently examined your personal attitudes to determine whether or not racist, sexist or elitist orientation is affecting your consultations and decisions?

2) Are you aware that racism and sexism can manifest themselves in non-verbal behaviors such as facial expression, eye contact or lack of it, the posture of the head and other parts of the body, or in the strength of a handshake. Moreover, racism and sexism is expressed not always by words themselves but in the way the words are spoken, and even in the inflection given to certain syllables. For example, if I am attempting to regard women as people, I might greet them by saying, "Good morning! How ARE you?" If I am a sexist who feels that almost every woman is a potential bedmate, I might greet them by saying, "Good morning! How are YOU?" Or, how would I respond if a black college freshman reports that he or she received a B+ in freshman calculus. If I believe that every student has untapped capability, I might respond by saying, "That's fantastic! What kept you from getting that beautiful A?" Or, if I feel that blacks have limited mental capacity, I might respond thusly, "Why, that's FANTASTIC. I'll bet

you never expected to do that well in such a hard subject, did you?" (I would be smiling, of course.)

These, and other considerations, might well be given serious thought. For counselors and support personnel now have the tremendous challenge to make written decisions and reports which, in fairness, should reflect objectivity, not bias. Since families of students, and adult students themselves, now have the right to examine records and data being compiled or kept on them, the counselor has a greater responsibility to be more sensitive and objective than ever before. Written decisions and reports which suggest or openly state bias and/or misinformation can be challenged. Thus, the counselor has to carefully choose words which reflect judgements and assessments which are as free of racial and sexual bias as possible.

Before going further, some explanations and definitions are in order. Exactly what are the main provisions of the Family Educational Rights and Privacy Act. As used in this paper, what is the meaning of racism and of sexism. First, an explanation of the law! The Family Educational Rights and Privacy Act (also known as the Buckley Amendment - after Senator James Buckley of New York) was passed by Congress in 1974. It established national minimum rights and standards concerning the use of school records. The Act contains several important features;

1) It guarantees parents or guardians the right to inspect their child's records.

2) It protects the confidentiality of students' records.

3) It provides procedures through which parents can challenge questionable recorded information.

4) The Act applies to all schools receiving federal education money and to any student who attends or has attended such a school.

5) The Act states that no federal funds will be made available to any school which prevents parents from exercising "the right to inspect and review the education records of their children. These inspection rights include the right;

   a) to be informed about the types and location of education records maintained by the school and the officials responsible for them;

   b) to obtain copies of the records at a price not greater than the cost of reproducing them; and

   c) to receive an explanation or interpretation of the records if requested.

To facilitate exercise of their rights, schools are required to inform eligible students--those 18 and over or attending a postsecondary institution--and parents at least once every year of the requirements of the Act and the school's procedures for carrying them out. A clear and concise reference that provides further details about this law is The Rights of Parents In the Education of Their Children, by Daniel Schimmel and Louis Fischer.[1]

Now turning to the definitions of the terms racism and sexism. According to William Sedlacek and Glenwood Brooks in Racism in American Education: A Model for Change,

racism can be divided into two categories and each defined as follows. Individual racism is an action taken by one individual toward another, which results in negative outcomes, because the other person is identified with a certain group. According to this definition, sexism is but a specific form of racism. Furthermore, groups which bear the brunt of racism may be cultural and ideological. Institutional racism is action taken by a social system or institution which results in negative outcomes for members of a certain group or groups. These definitions of racism are behavioral, in that results, not intentions, are important. Today, most racism is unknowing or unintentional. Some examples of racism in higher education are: (1) Biased admissions standards result in fewer minority students on the nation's campuses, (2) Faculty members have low expectations of minority student performance, (3) Most student activities are organized primarily for whites, (4) Most counselors are not knowledgeable about minority student's problems and concerns, (5) Few minority personnel are in Key decision-making roles, (6) Programs for minority students tend to be understaffed and underfunded, (7) Schools commit little of their own funds to minority student programs. Counselors, admissions officers, student activities directors and other college and university personnel might consider the claim that, "Racism is analogous to alcoholism in that one says, 'Well maybe I drink too much occasionally, but I am not

an alcoholic!'" [2]All of us, black and white, male and female, carry the germs of racism and sexism, in our psyche. Yet, as professional educators, it is our responsibility not to spread our infection, if possible. We can individualize racism and sexism by more closely examining personal attitudes and more carefully monitoring covert and overt behavior.

Individualizing racism and sexism with the intent to purge these concepts from our attitudinal network can help college and university counselors and support personnel live with and adhere to Senator Buckley's bill with less stress and tension. Specifically, the end results of individual change among counselors would:

1) enhance the rapport between the counselor and the student of a differing racial, ethnic, cultural or ideological identity

2) encourage the growth of trust on the part of the student because he or she feels that their personal interests, background and ambitions are respected and seriously considered

3) aid the counselor in maintaining confidentiality of student information and in developing a greater sense of confidence that the perception and judgement made of any individual student has been relatively free of bias. Should any written report of a student be challenged, the counselor can interpret the decisions made without being deceptive, manipulative or condescending.

Educators, and particularly counselors, have a moral and professional responsibility to honor and protect student confidences. The National Education Association

in its Code of Ethics says, in Principle I, titled, "Commitment to the Student,"

> In fulfillment of the obligation to the student, the educator--
>
> Shall not deliberately suppress or distort (information about) the student's progress--
>
> Shall not intentionally expose the student to embarrassment or disparagement--
>
> Shall not disclose information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose as is required by law.[3]

At this point, I would like to provide a demonstration of a counselor's violation of the rule on exposing the student to embarrassment and disparagement. My colleagues will assist me in acting out two scenes--one is which the counselor and the student are of the same ethnic background, and the other in which the counselor, an Italian-American, is interviewing a student with an obviously Polish accent. In the second scene, one might very well conclude that the student will receive an assessment from the counselor which will be kept in his files and might prove to be harmful at a later time. If the student demands to see his records, and subsequently challenges the counselor's analysis of him or her, one wonders what type of defense would the counselor provide. As you watch and compare the two scenes, think; how would you respond if you were the student, or if you were the counselor?

BRIEF SKIT[4]

The first interchange took place when an Italian-American counselor talked with an Italian-American student about the previous semester's grades:

Counselor: Data Processing 101. Whadja get for a grade?

Student: A "B".

Counselor: Data Processing 111?

Student: An "F".

Counselor: (Stops smiling momentarily, looks straight across at the student and then resumes smile). That's your major, data processing, right?

Student: (Smiling). Yeah, well I was...I just talked with him and he said it was 'cause of excessive absences.

Counselor: (Smiling, speaking with a slightly sarcastic tone). Good for you, good for you...Math 101?

Student: A "B".

Now according to formal standards, this student should have been in serious trouble--he failed a course in his major area of study. Yet the counselor did not reprimand him for the failure. He merely asked why it occurred and then indicated by going on to other courses that he would overlook the "F". Moreover, the interview continued in a friendly vein and ended

with the counselor giving the student a low-numbered access ticket for registration to replace the high-numbered ticket he had drawn originally. This favor enabled the student to register early and therefore sign up for a course he needed before its enrollment was filled. Such deviation from a regular business-like demeanor was unusual, even for students of good academic standing. Clearly, the counselor had decided that this student was someone worthy of special attention, and the factors which determined that decision were not universalistic standards of achievement.

The same counselor interacted quite differently with a Polish-American student who spoke with a slight nonstandard accent. Again, the topic was grades from the previous semester:

Counselor: (Unsmiling and formal) What did you get in your Biology 101 last semester?

Student: Whad' I get?

Counselor: What did you get for a grade?

Student: "B".

Counselor: "B"?

Student: Yeah.

Counselor: How about Speech 101?

Student: Speech, ah...ah, I th..., I think, I didn't get that one.

Counselor: (Looks straight at the student without smiling). What do you mean you "didn't get it?"

Student: I got some incomplete.

Counselor: Ah,...how come?

Student: Th...then I, ah, ma...I did complete them. You know, then I make up the test... and then they give me tha...

Counselor: Did you make up the tests?

Student: The grades...yes, I did.

Counselor: (Looks down at the student's transcript). You don't know all the grades you got, though.

Student: I didn't (unintelligible) and "C".

Counselor: (Looks up at the student without smiling). You didn't fail anything did you?

Student: No. No fail.

When the Polish-American student indicated confusion at the beginning of the exchange by responding to a question with a question, the counselor seemed to take that to mean that the student was not intelligent or attentive. From then on he challenged the student's answers even when they were not ambigious. The resulting tone was unfriendly and at times intimidating. Also, because the student had trouble communicating, the counselor inferred incorrectly that he was having trouble academically. While this student's interview was very different from the first student's, in both cases the decisions about who the students were, and therefore about whether they were worthy of help and attention, were made on bases other than universalistic standards of achievement.

The first example shows a type of interaction in which the counselor is supportive and allows the student to feel relaxed even though he has to discuss a personal academic failure in a major course. When the counselor interviews the Polish student who has trouble communicating, the result is one of impatience, slight hostility and a lack of empathy and understanding on the part of the professional. Indeed, some of you might have been in similar situations in which you felt intimidated by the all-knowing counselor and hesitated or refused to discuss personal problems because of a fear of reproach and personal embarrassment. The counselor might have written an assessment of you as being reticent, nervous, uncommunicative or even hostile, when actually you were reacting to the counselor's own subtle racism and sexism, which influenced his or her perception of you. It might be interesting, indeed fascinating, to go back and review old college and/or high school records and compare the statements made by counselors and other school personnel with the perception you had of yourself and of the documenting educators at that particular time.

Admissions officers, too, must now be cognizant of the implications of the Buckley Amendment. According to Richard G. Walker in the January, 1978 issue of The Journal for the National Association of College Admissions Counselors, in his article entitled, "Youth, Inexperience

and Racism in College Admission," "Admissions personnel must officially recognize and comprehend the existence of a dual quality of lifestyle in this country, largely based upon race and perpetrated by those who by apathy or purposeful neglect have malevolently disregarded the minorities of America. Such comprehension will elucidate the reasons for the gradually declining number of minorities applying to colleges from some areas, the reasons for the minority student's often dubious preparation, and the reasons for their own unique outlook on their educational experiences." Walker continues by saying that "once the status quo is recognized, admission personnel should see that their jobs cannot be served from the overall educational situation without intensifying the "ethnic anemia syndrome" at their own institutions. Admissions officers can manipulate the educational environment of the prospective college student through pressure upon government for more equitable allocation of funding, building subsidy, uniform teaching requirements, more stringent expectations from increasingly higher paid teaching staff, the elimination of administrative mismanagement and racism through information and exposure..." Finally, admission people should be capable of giving coherent information concerning colleges in general to third world students. Financial aid programs should be thoroughly understood by both student and parents. A continuing flow of such funds must be maintained due to the reality of dual lifestyle mentioned earlier.[5]

A decade ago, the Kerner Commission documented the existence of dual lifestyles when it issued a report stating that America is increasingly becoming two separate and unequal societies--one black and one white. Being aware of and responsive to the existence of dual lifestyles, or in fact, multiple lifestyles, is an immense challenge to educators. Those of us within the profession, as well as outside observers, can ease the pressure of this challenge by empathizing with the various roles and responsibilities that each of us must uphold. With the Family Educational Rights and Privacy Act now providing open access to student records, educators are expected to be more circumspect than ever before. No longer will former stereotypes and role expectations suffice as value judgements and indicators of student ambitions and achievement. Just one look at the status quo dictates that there is a continuing need to individualize racism and sexism for the purpose of ridding ourselves of these pernicious attitudes. When more college and university counselors, admissions officers, financial aid and student activity directors become self-actualizing change agents, then blueprints for institutional change will become cornerstones, then foundations and finally structures for institutional change. Consider the irony of this situation. If the field of education, which is 65% female, less than 1.5% of high school principals are women and only .6% of school superintendents are women. Why are there so few women in administrative positions? Some

possible answers are:

1) Women are not taught nor counseled to believe that they can fulfill leadership roles.

2) Women continue to be victimized by a male-dominated society that urges them not to compete against men unless they want to suffer labeling or risk living an adult life without male companionship.

3) The fact that we do not have a great many more white females in higher education is evidence that admissions officers have not been reluctant to balance classes with white males. Thus, admissions policies are negatively determining the number of white women who enter colleges and universities in order to assure that enough white men will enter, and thereby, receive the educational expertise to assume roles of leadership after graduation.[6]

So, in conclusion, counselors and other college and university personnel "have a professional responsibility" to students, their families and society, in general, to heighten their sensitivity, individualize and eliminate racism and sexism, as well as maintain objectivity and confidentiality according to the provisions of the Buckley Amendment. "Pupil analysis skills are not developed by legislative action alone, nor will they miraculously evolve as a result of long-standing attacks on pupil records themselves. Only when school personnel are sufficiently trained and can recognize their own competence in making sound educational decisions based upon their skills will they feel secure enough to exchange their defensive behaviors for openness. Certainly, in order to assure that records are not inaccurate, misleading, or otherwise in violation

of the privacy rights of children and their parents, a Family Educational Rights and Privacy Law became necessary. Unfortunately, Public Law 93-380 has done more to sensitize school personnel to their vulnerability to becoming involved in possible litigation. In their attempts to comply with Federal legislation, many educators will publish or document only neutral or positive statements in student records, hoping to reduce the visibility of inaccurate, unverifiable or potentially libelous data. This action does nothing to eliminate the root causes of the problem: subtle and often unconscious racism and sexism combined with inadequate student analysis skills. Thus, my charge to educators today is fourfold:

1) Individualize or personalize racism and sexism at a gut level.

2) Make every attempt to alter personal attitudes which can have the effect of limiting students and could subsequently harm them.

3) Monitor one's actions and be circumspect about the power and effect of non-verbal behavior, as well as the selection, tone and inflection of words.

4) Become more professionally trained in student analysis skills and be able to exercise educational discretion in the collection, maintenance use and release of pupil record data that serve to promote the total growth and development of children.

Addison Gayle, Jr., states in The Black Situation that, "Far from being liberal, the universities have been the most conservative, reactionary and racist institutions in the

American society."[7] I believe that his claim merits serious consideration. But since change is the only true constant in this world, I contend that even the most conservative of institutions change. Institutions change as fast as the people who develop and maintain them do. As individual units of the institution of education, each of us can do more to make the blueprint for change take effect in positive ways. Only then will the recipients of our educational training and expertise--the student--benefit by having an enhanced learning experience, which hopefully will be devoid of racial and sexual stereotypes, labeling, biased perceptions and unwritten and non-verbal taboos, restrictions and limitations.

FOOTNOTES

[1]David Schimmel and Louis Fischer, The Rights of Parents in the Education of Their Children, pp. 90-93.

[2]William E. Sedlacek and Glenwood C. Brooks, Jr., Racism in American Education: A Model for Change, pp. 5-6, 45-62.

[3]Walter D. St. John and John Walden, "Keeping Student Confidences," Phi Delta Kappan, pp. 682-684.

[4]Frederick Erickson, "Gatekeeping and the Melting Pot: Interaction in Counseling Encounters," Harvard Educational Review, February 1975, pp. 48-49.

[5]Richard G. Walker, "Youth, Inexperience and Racism in College Admission," The Journal for the National Association of College Admissions Counselors, January 1975, p. 15.

[6]Marcia Federbush, "Sex Discrimination: Highlights of the Problems in Different Areas of School Life," Overcoming Segregation and Discrimination, p. 57.

[7]Addison Gayle, Jr., The Black Situation, p. 101.

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SIMULATION EXERCISES

I. Assume that a student with whom a teacher has established a close relationship reveals in a conference that two fellow students are planning to commit robbery. The desire to maintain a relationship with the student by protecting the confidence conflicts with the social obligation to prevent a crime. Does the teacher have a responsibility to keep the potential thieves out of trouble? How would you handle such a situation?

II. Suppose a counselor learns from a youngster (or student) that s/he has stolen money from his (her) employer and a suit is threatened. The problem is adversely affecting the student's ability to concentrate on his schoolwork. The information would be helpful to other counselors and teachers, but it was given in confidence. How can this situation be handled and resolved?

III. Suppose that a student activities director learns that a sophomore student, Black with Puerto Rican parentage, is involved with drugs. After counseling with the student, it is the director's judgment that the student's parents need to be informed of the facts in the case. The student activities directors makes several attempts to reach the parents by telephone. None is successful. Finally, s/he writes a letter stating the case against the student. The student's parents are shocked, then enraged. They initiate a suit, alleging libel on the part of the student activities director. What do you think of a situation like this? How would you react if you were the students activities directors. Do the parents have a valid case?

IV. A Black student in his/her senior has come to you distraught because of the following situation. S/he is failing a required major course and may not be able to graduate in the current school year. The student feels that the white instructor has an innate prejudice against Blacks and has communicated this to you. S/he cites as evidence: 1) the refusal of the instructor to grant an appointment during office hours, 2) ridicule of the student's in-class responses, 3) consistently lower grades on papers even though white students who obviously have poorer quality work get higher marks, and 4) the instructor's deliberate refusal to recognize the raised hand of this student in favor of other students during class time. What would you do? The student is afraid that if any mention is made of of this confidential conversation to the professor, s/he will surely fail the course. S/he cannot afford another year of school since the four year tuition scholarship will terminate at the end of the semester.